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ABSTRACT

Designed for middle school through high school students, this unit contains eight lesson plans that focus on Colorado state law. The state lessons correspond to lessons in the volume, "Antidote: Civic Responsibility. Drug Avoidance Lessons for Middle School & High School Students." Developed to be presented by educators, law student, or attorneys, the state lessons are interactive and sequential, although individual lessons can stand alone. The document includes legal information about driving while intoxicated, drug offenses, sentencing, and drug and alcohol statutes written specifically to combat juvenile abuse. (RJC)

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Antidote: Civic Responsibility

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Lesson 1

1. Has Aimee violated any state laws? Have her parents?

Aimee has violated no Colorado law as there is no law which makes a minor liable for an unintentionally dangerous act toward another minor.

Aimee and Carrie's parents, however, may be in violation of the law. Colorado law states, "A person commits child abuse if such person causes an injury to a child's life or health or permits a child to be unreasonably placed in a situation which poses a threat of injury to the child's life or health, or engages in a continued pattern of conduct which results in . . . lack of proper medical care . . . mistreatment or an accumulation of injuries which ultimately results in the death of a child or seriously bodily injury to a child." Colo. Rev. Stat. §18-6-401 (West 1993 Supp.). Depending on how frequently Carrie was left under Aimee's supervision and for how long, the parents might be charged with child abuse. Carrie's health could be seriously endangered by Aimee, if, for example, Carrie had the measles and was given aspirin by Aimee - the result could be deadly.

2. Does state law allow 17 year old Tyrell to drink a glass of wine with his dinner without his parents' consent?

No. Colorado law requires individuals be 21 years old before consuming malt beverages such as beer (Colo. Rev. Stat. §12-46-112 (1992)) or any malt, vinous or spirituous liquor (Colo. Rev. Code §12-48-128 (1992)). If Tyrell's parents knew, permitted or should have known of Tyrell's consumption of alcohol, they too are in violation of the law.

3. Is Maria violating any law when she tells her roommates whom to call to buy marijuana?

Maria is in violation of Colo. Rev. Stat. §18-18-405(1)(a) which prohibits the unlawful possession of controlled substances. It further prohibits conspiring with one or more other persons to possess a controlled substance. Maria's roommates wanted to possess marijuana. She provided them with information critical to their acquiring possession. Consequently, Maria is in violation of the law.

4. Have Adam and Alex broken any laws other than those against drinking and fighting?

Yes. Joe died as a result of his fight with Adam and Alex. Colorado law holds that one commits the crime of manslaughter if "he recklessly causes the death of another." Colo. Rev. Code §18-3-104 (1991). Alternatively, criminally negligent homicide occurs when the death of another person occurs by behavior amounting to criminal negligence. Colo. Rev. Stat. §18-3-105 (1992). Finally, an assault charge is an even less

severe charge. This occurs if one knowingly or recklessly causes bodily injury to another person. Colo. Rev. Stat. §18-3-204 (West 1990).

5. **Has Jose violated any state law even though he is not drinking? Has Carlos or TJ violated any state law?**

Jose, age 17, is serving as the designated driver, and is not drinking according to the facts. He is not violating any Colorado law unless possession is defined so broadly to include his constructive possession, that is, possession inside an automobile over which he had control.

TJ, age 18, is in violation of Colo. Rev. Stat. §12-47-128(1)(c) (1992) which prohibits a minor from possession liquor in any public place including streets, roads or highways. Carlos, age 22, can legally consume alcohol, however, consumption in a public place is prohibited. Colo. Rev. Stat. §12-47-128(1)(h) (1992). He may also be in violation of the law if he assisted TJ acquire alcohol. Colo. Rev. Stat. §12-47-128(1)(a) (1992). Colo. Rev. Stat. §12-46-112 (1992) has parallel violations relating to the possession and consumption of beer.

6. **Is Dr. Melrose violating any state or federal law by prescribing pain killers without conducting an examination or determining need?**

Dr. Melrose is violating not only state law, but federal law too. Under 21 U.S.C.A. § 829, a physician must have a legitimate medical purpose for dispensing drugs, and the act of dispensing or prescribing drugs should be within the usual course of professional conduct. U.S. v. Varma, 691 F.2d 460 (1982), U.S. v. Jamieson, 605 F. Supp. 119 (1985).

Dr. Melrose's patients, if they do not provide him with a bona fide reason for needing the painkillers, may also be breaking the law. 21 U.S.C.A. § 843 prohibits knowingly or unknowingly acquiring possession of a controlled substance by misrepresentation, fraud, forgery, deception or subterfuge.

Colorado law prohibits individuals from knowingly dispensing, distributing, or selling controlled substances, except as authorized by Colo. Rev. Stat. §12-22-3. Colo. Rev. Stat. §18-18-405 (1992). Dr. Melrose is violating this section even though he is a licensed physician since he issued the prescription in bad faith, without the patient having a legitimate medical need for the drugs.

7. **Is Danielle violating any law by taking only one or two pills from someone else's prescription?**

Danielle is violating several state and federal laws. Since she is in effect dispensing prescription drugs to herself, she is violating 21 U.S.C.A. § 829, which prohibits dispensing any

controlled substance which is a prescription drug without the written prescription of a practitioner. She is also violating 21 U.S.C.A. § 843, which prohibits knowingly or unknowingly acquiring possession of a controlled substance by misrepresentation, fraud, forgery, deception or subterfuge and 21 U.S.C.A. § 844 which prohibits simple possession of a controlled substance unless such a substance was obtained by a prescription. The seriousness of her crime under federal drug control laws will depend on the type of drug which she is taking and how the drugs are used.

Danielle is also violating Ohio law. It is unlawful for a person to knowingly possess a controlled substance. Colo. Rev. Stat. §18-18-405 (1992). She is also violating Colo. Rev. Stat. §12-22-315 (1991) which prohibits persons from obtaining controlled substances by fraud, deceit misrepresentation or subterfuge; or by forgery or alteration of a prescription or written order. Additionally, the manner in which Danielle acquired the substance is in violation of the law. A person commits theft by knowingly obtaining or exercising control over anything of value of another without authorization, or by threat or deception when that person intends to permanently deprive the other person of its use or benefit or uses the item in such a manner so as to deprive the person permanently of its use or value. Colo. Rev. Stat. §18-4-401 (1992).

8. **Is Renee breaking any law even though she is not selling drugs herself?**

Even thought she is not selling drugs directly, Renee is violating several state and federal laws. She is violating 21 U.S.C.A. § 841 prohibiting possession of a controlled substance with the intent to manufacture, distribute or dispense drugs and 21 U.S.C.A. § 844 prohibiting simple possession of a controlled substance.

Renee could receive an increased sentence in accordance with the federal sentencing guidelines as a result of her using children in her scheme. Under 21 U.S.C.A. § 859, the distribution of a controlled substance to a person under 21 year of age is subject to increased penalties. The United States expressed its concern with the importance of protecting children from drug trafficking under 21 U.S.C.A. § 860, which imposes heavier prison sentences in cases involving the distribution or manufacture of controlled substances in the proximity of schools, playgrounds or youth centers. 18 U.S.C.A. App. 4 § 3B1.3 also provides for increased sentences in cases of abuse of one's position of trust, as in a drug trafficking defendant involving her daughter in the drug trade. U.S. v. Ledesma, 979 F.2d 816 (1992).

Renee is in violation of Colo. Rev. Stat. §18-18-405 (1992) which prohibits selling, distributing and dispensing controlled substances. Her sentence will likely be enhanced

since she "solicited, induced, encouraged, intimidated, employed, hired or procured a child" to act as her agent to assist in the unlawful distribution, manufacturing, dispensing, sale or possession for the purposes of sale in any controlled substance. Colo. Rev. Stat. §18-18-407(g) (1992).

9. Did Jim violate any law other than those regarding controlled substances?

Their heroin use is a felony under federal drug-control statutes. 21 U.S.C.A. § 841 prohibits possession of a controlled substance with the intent to manufacture, distribute or dispense such substance. 21 U.S.C.A. § 844 prohibits simple possession of a controlled substance.

Jim transmitted the HIV virus to Andre through the shared needle. Colorado has not yet dealt with this issue. Under the Model Penal Code, however, Jim's behavior could constitute simple or aggravated assault or the attempt thereof, or reckless endangerment; under certain extreme situations, it could be construed as murder. See Gene Schultz, AIDS: Public Health and the Criminal Law, 7 St. Louis U. Pub. L. Rev. 65 (1988); Roger N. Braden, AIDS: Dealing With the Plague, 19 N. Ky. L. Rev. 277 (1992). In some cases, it has been suggested that the HIV virus provides a deadly weapon. Cf. Brock v. State, 555 So.2d 285 (Ala. Crim. App. 1989).

10. Has the bartender or owner of Bulldog's Bar & Grill violated any law?

Yes. Service of alcoholic beverages to a visibly intoxicated person is prohibited. Colo. Rev. Stat. §§12-47-128(1)(a) & (5)(a)(I) (1992). Both the bartender and owner will be held responsible.

Lesson 2

CRIMINAL JUSTICE STATISTICS: DRUG AND ALCOHOL RELATED OFFENSES UNIFORM CRIME REPORT DATA OF 1990--CRIME IN THE UNITED STATES

According to the Uniform Crime Report of 1990, 68% of the drug abuse violators were arrested for possession of heroin, cocaine or a narcotic derivative. A little over 31% of drug arrests were for the sale and manufacture of drugs.

Out of the 14,195,100 total number of arrests that occurred in 1990, drug abuse violations accounted for 1,089,500, driving under the influence comprised 1,810,800, and liquor law violations represented 714,700 of the total.

1981-1990 Ten Year Trend

Arrests for Drug Abuse Violations

In 1981, the total number of arrests for drug abusers under the age of 18 was 69,383. On the other hand in 1990, the total number was 50,435. This represents a 27.3% **decrease** in the number of arrests for persons under the age of 18. However, the number of arrests for persons over the age of 18 represent an 89.9% **increase** from 332,733 in 1981 to 631,932 in 1990.

Liquor Law Violations

For persons over the age of 18, the number of arrests for liquor law violations have dramatically **increased** to 61% from 218,079 in 1981 to 351,064 in 1990. However, the number of arrests for persons under the age of 18 has decreased to less than 0.4%.

♦ ♦ ♦

Criminal Victimization in the United States, 1990 A National Crime Victimization Survey Report, February, 1992

Percent Distribution of Victimizations by Perceived Drug or Alcohol Use by Offender:

- Of the **130,260** total rapes reported by victims to police, **49.8%** were believed to be committed by someone under the influence of drugs or alcohol.
- Of a total of **1,149,710** reported robberies, **24.2%** involved an offender under the influence of drugs or alcohol.
- Of **1,600,760** aggravated assaults committed **40%** were committed by people under the influence of drugs.
- Of the **3,128,130** simple assaults reported, **32.9%** were perpetrated by someone perceived to be under the influence of drugs or alcohol.

Lesson 4

FEDERAL SCHEDULE (answers to handout 3)

DRUG	SCHEDULE
heroin	schedule 1
beer	not a scheduled drug
vodka	not a scheduled drug
nitrate	not a scheduled drug
amphetamines	schedule 3
caffeine	not a scheduled drug
marijuana	schedule 1
crack	schedule 2
scotch	not a scheduled drug
MSG	not a scheduled drug
cocaine	schedule 2
glue	not a scheduled drug

FEDERAL PENALTIES BY SCHEDULE FOR POSSESSION

SCHEDULE	MAX. PRISON	MAX. FINE	MAX. TOTAL
schedule 1	15 years	$25,000	15yrs + $25,000
schedule 2	15 years	$25,000	15yrs + $25,000
schedule 3	5 years	$15,000	5yrs + $15,000
schedule 4	3 years	$10,000	3yrs + $10,000
schedule 5	1 year	$ 5,000	1yr + $ 5,000
unscheduled drug	n/a	n/a	n/a

The penalty doubles if the defendant has a previous conviction for a schedule law violation.

In order for a drug to be a narcotic, it must be a derivative of opium. All narcotics contain opium or opium derivatives, ie: heroin.

Malt beverages such as beer are not included in the scheduling process. They are controlled by liquor laws.

Information from 21 U.S.C.A. § 841 (West 1981).

States	Heroin	Cocaine	Crack	Marijuana	Amphetamine
Alabama	sch 1	sch 2	sch 2	sch 1	sch 3
Alaska	sch 1A	sch 2A	sch 2A	sch 3A	sch 4A
Arizona	sch 1	sch 2	sch 2	sch 1	sch 2
Arkansas	sch 1	sch 2	sch 2	sch 1	not listed
California	sch 1	sch 2	sch 2	sch 1	sch 2
Colorado	sch 1	sch 2	sch 2	sch 1	sch 2
Connecticut	sch 1	sch 2	sch 2	sch 1	sch 3
Delaware	sch 1	sch 2	sch 2	sch 1	sch 2
D.C.	sch 1	sch 2	sch 2	sch 2	sch 2
Florida	sch 1	sch 2	sch 2	sch 1	sch 2
Georgia	sch 1	sch 2	sch 2	sch 1[1]	sch 2
Hawaii	sch 1	sch 2	sch 2	sch 1	sch 2
Idaho	sch 1	sch 2	sch 2	sch 1	sch 2
Illinois	sch 1	sch 2	sch 2	listed under its act: the Cannabis Control Act, 56 1/2 §701 et seq	sch 2
Indiana	sch 1	sch 2	sch 2	sch 1	sch 2
Iowa	sch 1	sch 2	sch 2	sch 1	sch 2
Kansas	sch 1	sch 2	sch 2	sch 1	sch 1
Kentucky	sch 1	sch 2	sch 2	sch 1	sch 2
Louisiana	sch 1	sch 2	sch 2	sch 1	sch 2
Maine[2]	sch W	sch W	sch W	sch W & Z	sch W
Maryland	sch 1	sch 2	sch 2	sch 1	sch 1
Massachusetts[3]	class A	class B	class B	class D	class B
Michigan	sch 1	sch 2	sch 2	sch 1	sch 2
Minnesota	sch 1	sch 2	sch 2	sch 1	sch 2
Mississippi	sch 1	sch 2	sch 2	sch 1	sch 2
Missouri	sch 1	sch 2	sch 2	sch 1	sch 2
Montana	sch 1	sch 2	sch 2	sch 1	sch 2

[1] Must have more than 15% THC (tetrahydrocannobinol), the chemical in the cannabis plant.

[2] Maine schedules its drugs under an alphabetical category: W, X, Y & Z. The schedules are similar to other state categorizations.

[3] Massachusetts calls their schedules classes, but they are the same thing.

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States	Heroin	Cocaine	Crack	Marijuana	Amphetamine
Nebraska	sch 1	sch 2	sch 2	sch 1	sch 2
Nevada[4]	sch 1	sch 2	sch 2	sch 1	sch 3
New Hampshire	sch 1	sch 2	sch 2	sch 1	sch 3
New Jersey	sch 1	sch 2	sch 2	sch 1	sch 3
New Mexico	sch 1	sch 2	sch 2	sch 1 & 2	sch 2
New York	sch 1	sch 2	sch 2	sch 1	sch 2
North Carolina	sch 1	sch 2	sch 2	NC has a sixth schedule which incl. marijuana	sch 2
North Dakota	sch 1	sch 2	sch 2	sch 1	sch 2
Ohio	sch 1	sch 2	sch 2	sch 1	sch 2
Oklahoma	sch 1	sch 2	sch 2	sch 1	sch 2
Pennsylvania	sch 1	sch 2	sch 2	sch 1	sch 2
Puerto Rico	sch 1	sch 2	sch 2	sch 1	sch 3
Rhode Island	sch 1	sch 2	sch 2	sch 1	sch 2
South Carolina	sch 1	sch 2	sch 2	sch 1	sch 2
South Dakota	sch 1	sch 2	sch 2	sch 1	sch 2
Tennessee	sch 1	sch 2	sch 2	sch 2, but only for certified patients under the Controlled Substances Therapeutic Research Act	sch 2
Texas	sch 1	sch 2	sch 2	sch 1	sch 2
Utah	sch 1	sch 2	sch 2	sch 1	sch 2
Vermont	sch 1	sch 2	sch 2	sch 1	sch 3
Virginia	sch 1	sch 2	sch 2	not listed, but liquid marijuana or hashish oil is listed as sch 1	sch 2
Washington	sch 1	sch 2	sch 2	sch 1	sch 2
West Virginia	sch 1	sch 2	sch 2	sch 1	sch 2
Wisconsin	sch 1	sch 2	sch 2	sch 1	sch 2

[4] While Nevada does not specifically name drugs under its five schedules, but instead lists the specific tests to determine under which schedule a drug belongs § 453.2182 says that the state will use 21 USC as a guide for scheduling. The state merely reserves the right to reschedule any controlled substance as it sees fit according to the tests set out in 453.166, et. seq.

States	Heroin	Cocaine	Crack	Marijuana	Amphetamine
Wyoming	sch 1	sch 2	sch 2	sch 1	sch 2

OFFENSE/SUBSTANCE	SENTENCE
First Offense: Cocaine - Possession With Intent To Distribute - 5 kg	• imprisonment for 4 to 12 years, and/or • fine of $3000 to $750,000
First Offense: Trace of Heroin - Possession of 1 kg or more of a mixture with a small, but detectable amount of heroin	• imprisonment for 4-12 years, and/or • fine of $3000 to $750,000
First Offense: Codeine - Possession - 200 mg	• imprisonment for 4-12 years, and/or • fine of $3000 to $750,000
Second Offense: Marijuana - Possession - 50 kg	• imprisonment for 2-6 years, and/or • fine of $2000 to $500,000
Third Offense - Methamphetamine - Possession - 100 g	• imprisonment for 8 to 24 years, and/or • fine of $5000 to $1 million

Cite: CRS §18-18-405

Current Federal Penalties:

Group 1 and Group 2: . . . person shall be sentenced to prison which may not be less than 10 years or more than life and a fine not to exceed 4 million dollars.

Group 3: . . . person shall be sentenced to a term of imprisonment of not more than one year, a fine not exceed $250,000 in the case of an individual.

Group 4: . . . person shall be sentenced to a term of imprisonment of not more than 10 years, a fine not to exceed $500,000.

Group 5: . . . person shall be sentenced mandatory life imprisonment without release and fine not to exceed $8 million.

Cite: 21 U.S.C. § 841 (1992).

Lesson 6 & 7

1. **What does DUI stand for?**

Driving while intoxicated.

2. **What does DUI stand for?**

Driving under the influence. Section 42-4-1202(1)(a) makes it a misdemeanor for anyone to drive "a vehicle when a person has consumed alcohol which affects him/her to a degree the he/she is substantially incapable, either mentally or physically, or both, to exercise clear judgment, sufficient physical control, or due care in the safe operation of a vehicle."

Colorado also makes it a misdemeanor for anyone who is impaired by alcohol to drive. Driving while ability is impaired is defined as "driving a vehicle when a person has consumed alcohol and it affects him the slightest degree so that he is less able than he ordinarily would have been, either mentally or physically or both, to exercise clear judgment, sufficient physical control, or due care in the safe operation of a vehicle." Section 42-4-1202(1)(b).

It is also a misdemeanor under section 42-4-1202(1.5)(a) to drive when your blood alcohol content (BAC)level is 0.10.

3. **In terms of penalties, is being convicted of DUI more serious than being convicted of DUI?**

The penalties for conviction of DUI laws are more serious than the penalties for driving while ability is impaired. See answer to #4 below.

4. **What are the penalties for being convicted of DUI? DUI?**

DUI Penalties - Section 42-4-1202:

CONVICTIONS	PUNISHMENT
first conviction	• imprisonment from 5 days to 1 year, and • a fine of $300 to $1000, and • 46 to 96 hours of community service, and • for minors, driving privileges will be revoked; for adults with a BAC of .10 or more driving privileges will be revoked for 3 months.
second conviction within a five year period	• imprisonment for a minimum of 96 days up to 1 year, and • a fine of $500 to 1500, and • 60 to 120 hours of community service, and • for second and subsequent convictions of adults, driving privileges will be suspended for 1 year.
DUI conviction within 5 years of a driving while ability is impaired conviction	• imprisonment for 70 days to 1 year, and • a fine of $450 to $1500, and • 56 to 120 hours of community service, and • for adults, driving privileges will be suspended for 1 year.

Driving while ability is impaired penalties:

CONVICTIONS	PUNISHMENT
first conviction	• imprisonment of 2 to 180 days, and • a fine of $100 to $500, and • 24 to 48 hours of community service, and • if a minor, license revocation in accordance with section 42-2-122.
second or subsequent convictions within 5 years	• imprisonment for 45 days to 1 year, and • a fine of $300 to $1000, and • 48 to 96 hours of community service, and • license revocation in accordance with section 42-2-122.

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driving with ability impaired conviction within 5 years of DUI conviction	• imprisonment for 60 days to 1 year, and • a fine of $400 to $1200, and • 52 to 104 hours of community service.

5. **What is the penalty for refusing to submit to a breathalyzer test upon a police officer's reasonable request?**

Under section 42-4-1202 if a person drives on the highways of Colorado s/he consents to take and complete a breath test to determine blood alcohol content. Under section 42-2-122.1 if a person refuses to take the test his/her license can be revoked for 1 year.

6. **What must a person's blood alcohol content (BAC) be before he/she is legally intoxicated?**

Under section 42-4-1202 a BAC of 0.10 results in the presumption of that one is under the influence of alcohol.

7. **The legal limit for blood alcohol is lower for persons under the legal drinking age of 21. True or False?**

False. There is no separate statute that makes the legal limits for minors lower than adults.

8. **An open container of alcohol can be in your car if you are 21 or over. True or False?**

There is no specific open container law in Colorado. However, under section 12-47-128 it is illegal for a person under 21 to be in possession of alcohol.

Lesson 9

Although the drinking age is 21 in all 50 states (meaning specifically that the sale of alcohol to minors is prohibited), the laws on teenage drinking vary from state to state. The laws vary in regard to whether they include prohibition of the purchase of alcohol, the attempt to purchase alcohol, the consumption of alcohol and the possession of alcohol. According to the March 11, 1993 Safety Recommendation report of the National Transportation Safety Board,

- Five states (DE, FL, MT, NH & NY) and the District of Columbia do not prohibit the purchase of alcohol by minors.
- West Virginia and the District of Columbia do not prohibit public possession of alcohol by minors.
- 23 states (AK, AR, DE, DC, FL, GA, RI, IL, IA, LA, ME, MD, MI, MS, MT, NV, NH, NY, SC, TX, UT, VT, VA) do not prohibit minors from attempting to purchase alcohol.
- 21 states (AR, CO, CT, FL, GA, HI, IA, KY, LA, MA, MS, MO, NE, NH, NM, NC, OR, SC, VT, WV, WY) do not prohibit alcohol consumption by minors.
- 16 states (AR, CA, CO, HI, KY, LA, ME, MI, NM, NY, NC, OK, SD, VA, WA, WY) do not prohibit minors from misrepresenting their age in order to purchase alcohol.
- 19 states (AL, AR, CO, DE, DC, IA, KS, LA, MD, MN, MT, NJ, OR, PA, SC, UT, VA, WA, WI) do not prohibit minors from presenting false ID to purchase alcohol.

In addition, most states do no prohibit minors from driving with alcohol in their blood unless their blood alcohol content reaches the adult legal limit, which is .10 percent in most states. Fifteen states, however, have amended their laws to lower for minors the permitted blood alcohol content while driving. These laws vary according to the age under which minors must be in order for the lower blood alcohol content to apply. Here is the layout for state laws on blood alcohol content for minors while driving:

0.00 BAC	0.01 BAC	0.02 BAC	0.04 BAC	0.05 BAC	0.06 BAC
AZ (<21)	NJ (<21)	ME (<21)	RI (<21)	CA (<18)	GA (<18)
NC (<19)		MD (<21)	NH (<21)	NM (<18)	
OR (<21)		OH (<18)			
UT (<21)		VT (<18)			
WI (<18)					

A number of states have tried to cut down on teenage driving accidents by implementing nighttime driving restrictions. The following states have some form of curfew for teenage driving:

ID: minors <16 can drive during the daytime only
IL: minors <17 cannot drive between 11pm-6am Mon-Thur and 12am-6am Fri-Sun
LA: minors <15 cannot drive between 11pm-6am Mon-Thur and 12am:6am Fri-Sun
MD: minors <16 cannot drive between 12am-5am
MA: minors <18 cannot drive between 1am-4am
NY: minors <18 cannot drive between 9pm-5am
PA: minors <18 cannot drive between 12am-5am
SD: minors <16 cannot drive between 8pm-6am.